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| 09/772,278 | 03/15/2001 | Robert Skvorecz | 4336 | 9274 |

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| EXAMINER |
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PAPER

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In re Application of SKVORECZ, ROBERT

Appl. No.: 09/772,278
Filed: March 15, 2001
For: WIRE CHAFING STAND

**DECISION ON PETITION
UNDER 37 CFR 1.198 AND
MPEP 1214.07(B)**

This is a decision on the petition filed December 19, 2007 to request reopening of prosecution following a final decision by the Board of Patent Appeals and Interferences (BPAI) to provide evidence which would rebut the prima facie case of anticipation set forth by the Examiner and the BPAI.

The petition is **DENIED**.

A review of the file history shows that a decision was rendered by the BPAI on March 28, 2007 affirming in part the examiner in the rejection of claims 1 and 2 under 35 USC 102(b). The board also entered a new grounds of rejection against claims 1-5 and 7 under 37 CFR 41.50(b). In the decision, the BPAI also specifically indicated that according to 37 CFR 41.50(b) the applicant has two options. The first option is to submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and has the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. The second option is to request that the proceeding be reheard under 37 CFR 41.52 by the Board upon the same record. After receiving the BPAI's decision, the applicant filed a Request for Rehearing of the BPAI's decision on May 21, 2007. In this request, the applicant requested an oral rehearing for the opportunity to present a model of the prior art to rebut the BPAI's inherency allegation. In response to the Request for Rehearing, the BPAI mailed an order on August 2, 2007 denying oral hearing. The BPAI pointed to 37 CFR 41.47 where it is disclosed that the applicant must file a request for oral hearing within two months of the date of the Examiner's Answer. Since the request was filed more than two months from said answer, the request for Oral Hearing was considered untimely and denied. After receiving the BPAI's decision of August 2, 2007, the applicant then filed a request for Reconsideration of the Denial for Oral Hearing Following a Board Decision on August 22, 2007. In response to the request for reconsideration, the board issued another order denying oral hearing on November 15, 2007. This order again pointed to 37 CFR 41.47 in the same manner as in the first order of August 2, 2007 mentioned above. The BPAI also stated that they have not requested any information from

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applicant, nor do they have the authority to do so under 37 CFR 41.50(d). They also pointed to 37 CFR 41.33(d) which dictates the appropriateness and timeliness of all evidence provided after filing of an Appeal. The BPAI also issued a Decision on the Request for Rehearing on November 19, 2007. In this order, the BPAI pointed to 37 CFR 41.33(c) and stated that any evidence submitted at this time would not be considered. Finally, in response to the BPAI's decisions of November 15, 2007 and November 19, 2007, the applicant filed the present petition on December 19, 2007 requesting the relief set forth above.

After reviewing the above file history, 37 CFR 41.50, 37 CFR 1.198, and MPEP 1214.07(B) it has been determined that the applicant's request to reopen prosecution at this point is improper. 37 CFR 41.50 clearly states that when the BPAI makes a new grounds of rejection, the appellant, within two months from the date of the decision, must exercise ONE of two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims. The first option is to reopen prosecution, and the second option is to request rehearing. The applicant cannot first try rehearing, and when that fails, try to reopen prosecution. Further, 37 CFR 1.198 refers to 37 CFR 41.50, which, again sets forth the two month time period for choosing one of the options set forth above. 37 CFR 1.198 does not provide any other course of action. Also, MPEP 1214.07(B) refers to 37 CFR 1.198, which, as stated above, refers back to 37 CFR 41.50 and the two month window to choose ONE of the above options. On May 21, 2007, the applicant requested rehearing within the time period above. Now, in light of the fact that one, it is well past the two month period set forth in 37CFR 41.50, and two, that applicant has already exercised their ONE option, i.e. requesting rehearing, the applicant's request to reopen prosecution is hereby DENIED.

In conclusion, the status of the application is abandoned. Any questions regarding this decision should be directed to Supervisory Patent Examiner Brian Glessner at 571-272-6843.

The petition is **DENIED**.



Kathy Matecki
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BG/SM 6/16/2008

